

# VERIFICATION

STATE OF CALIFORNIA, COUNTY OF \_\_\_\_\_

I have read the foregoing \_\_\_\_\_ and know its contents.

## ☒ CHECK APPLICABLE PARAGRAPH

☐ I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am ☐ an Officer ☐ a partner \_\_\_\_\_ ☐ a \_\_\_\_\_ of \_\_\_\_\_

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. ☐ I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. ☐ The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am one of the attorneys for \_\_\_\_\_, a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

\_\_\_\_\_  
Type or Print Name

*Todd Pitt*  
Signature

## PROOF OF SERVICE

1013A (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF \_\_\_\_\_

I am employed in the county of \_\_\_\_\_, State of California.

I am over the age of 18 and not a party to the within action; my business address is: \_\_\_\_\_

On \_\_\_\_\_, 19\_\_\_\_, I served the foregoing document described as \_\_\_\_\_

☐ \_\_\_\_\_ on \_\_\_\_\_ in this action  
☐ by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:  
☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

## ☐ BY MAIL

☐ \*I deposited such envelope in the mail at \_\_\_\_\_, California.

The envelope was mailed with postage thereon fully prepaid.

☐ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing.

Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at \_\_\_\_\_ California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_, California.

☐ \*(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_, California.

☐ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Signature

STUART'S EXBROOK TIMESAVER (REVISED 5/1/88)

NEW DISCOVERY LAW 2030 AND 2031 CCP

\*May be used in California State or Federal Courts

\* BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT BOX OR BAG

\*\* FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER



SCV-933210

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO  
CIVIL PROCEEDINGS AS OF 7/23/98

PITTS VS ROMULUS CORPORATION

PITTS, TODD A (FRIEDMAN, FRIEDMAN & ROXBOROUGH, - ATTORNEY)	PL0001, PLAINTIFF
ROMULUS CORP	CD0001, CIV DEFNT
EASTON CORPORATION, THE	CD0002, CIV DEFNT
BREEN, QUENTIN L	CD0003, CIV DEFNT
PARKS, DANIEL	CD0004, CIV DEFNT
ROMULUS ENGINEERING INC (TOWNSEND & TOWNSEND KHOURIE & CREW (PALO ALTO), -)A	CD0005, CIV DEFNT

1991

06/12 COMPLAINT FOR BREACH OF CONTRACT  
SUMMONS ISSUED

06/18 CIVIL COVER SHEET RECEIVED

10/23 REQUEST TO ENTER DEFAULT-NOT ENTERED

10/31 SUMMONS FILED  
REQUEST TO ENTER DEFAULT-ENTERED AS TO ROMULUS ENGINEERING  
CORP., ROMULUS CORP., ROMULUS CORP. AND EASTON CORP, ROMULUS  
PROOF OF SERVICE ON DANIEL L. PARKS  
(6) PROOFS OF SERVICE

1992

02/05 STIP AND ORDER VACATING DEFAULT JUDGMENT

02/18 NOTICE OF ENTRY OF STIP/ORDER VACATING DEFAULT JUDGT

05/05 NTC OF APPLICATION AND HEARING FOR RIGHT TO ATTACH ORDER -  
05/19/92 at 10:30am DISC RIGHT TO ATTACH ORDER  
PROOF OF SERVICE  
DECLARATION OF BRIAN J. FRIEDMAN  
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
APPLICATION FOR RIGHT TO ATTACH ORDER & WRIT OF ATTACHMENT05/12 APPLICATION FOR RIGHT TO ATTACH ORDER  
DECLARATION OF TODD A. PITTS

05/26 DECLARATION OF DANIEL J. PARKS

SCV-933210

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO  
CIVIL PROCEEDINGS AS OF 7/23/98

PITTS VS ROMULUS CORPORATION

1992

DECLARATION OF ANTHONY T. EASTON

05/26

DECLARATION OF QUENTIN L. GREEN  
DECLARATION OF JENNIFER C. PIZER  
MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO  
PLTF'S APPLICATION FOR RIGHT TO ATTACH ORDER & WRIT  
PROOF OF SERVICE  
NTC OF OPPOSITION TO APPL FOR RIGHT TO ATTACH  
06/02/92 at 10:30am DISC RIGHT TO ATTACH ORDER  
OBJECTION TO DECLARATION OF TODD A PITTS; MOTION TO STRIKE  
06/02/92 at 10:30am DISC TO STRIKE

05/27

PROOF OF SERVICE  
AMENDED MEMO OF P/A IN OPPOSITION TO PLTF'S APPLICATION  
FOR RIGHT TO ATTACH ORDER & WRIT OF ATTACHMENT

05/28

STIPULATION & ORDER CONT HRG ON APPLIC FOR RIGHT TO ATTACH  
& WRIT OF MANDATE  
TABLE OF AUTHORITIES

06/24

EVIDENTIARY OBJECTIONS TO THE DECLARATION OF QUENTIN  
L. BREEN  
PLTF'S REPLY TO DEFT'S OPPOSITION TO APPLICATION FOR  
WRIT OF ATTACHMENT  
EVIDENTIARY OBJECTION TO THE DECLARATION OF DANIEL J.  
PARKS  
EVIDENTIARY OBJECTIONS TO THE DECLARATION OF ANTHONY T.  
EASTON

07/14

ORDER DENYING APPLICATION FOR RIGHT TO ATTACH ORDER AND  
WRIT OF ATTACHMENT

08/11

NTC OF ENTRY OF ORDER

1993

03/09

AT-ISSUE MEMO/ARBITRATION CONFERENCE STATEMENT

04/13

NOTICE OF EARLY SETTLEMENT CONFERENCE

04/28

NOTICE OF EARLY SETTLEMENT CONFERENCE-EARLY SETTLEMENT  
PROGRAM

08/23

TRIAL SETTING CONFERENCE - 09/07/93 at 07:30am X 1  
TRIAL SETTING CONFERENCE

SCV-933210

Page 3

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO  
CIVIL PROCEEDINGS AS OF 7/23/98

PITTS VS ROMULUS CORPORATION

1993

08/30 MAILING (CA025) FROM 03/28/94 SCD1 09:00 AM  
FOR 03/08/94 SC16 08:00 AM  
- felony:

08/31 NOTICE OF TIME AND PLACE OF TRIAL

09/07 NOTICE OF TIME AND PLACE OF TRIAL, JURY TRIAL, PLTF  
DEMANDS (PTR1)  
- 03/28/94 at 09:00am SCD1 JURY TRIAL with jury and reporter  
estimated 04 DAYS  
SETTLEM CONF, - 03/08/94 at 08:00am SC16 SETTLEMENT CONFERENCE  
with jury estimated 04 DAYS

10/13 MEMO OF PTS & AUTHS IN SUPP OF MOTION FOR CONTINUANCE  
DECLARATION OF BRIAN J FRIEDMAN  
NTC OF MOTION TO CONTINUE TRIAL - 10/27/93 at 09:30am SCD1  
CONTINUANCE OF TRIAL DATE

10/27 SCD1-MO.CAL.: MO. CONT. 3-28-94 TRIAL GRANTED; DROPPED  
FROM CALENDAR  
- 03/28/94 at 09:00am SCD1 JURY TRIAL with jury and reporter  
estimated 04 DAYS  
SCD1-MO.CAL.: TRIAL ADVANCED BY MOTION TO 3-21-94 -  
03/21/94 at 09:00am SCD1 JURY TRIAL with jury and reporter

11/12 ORDER ON MO TO CONTINUE TRIAL DATE

1994

02/10 REQUEST TO ENTER DEFAULT-NOT ENTERED ROMULUS CORP

02/17 \$78 JURY FEE DEPOSIT-(ATTY) THIEL CAMPBELL #18390 - JURY FEE DEPOSIT  
Paid: \$78.00 Receipt: 18390 Paid by: THIEL CAMPBELL

03/02 ANSWER OF ROMULUS ENGINEERING, INC.  
\$ 182 PD BY: ROMULUS ENGINEERING, INC. - Receipt: 298801

03/21 PLTF'S TRIAL BRIEF  
(2) MOTION IN LIMINE BY PLTF  
PLTF'S RESPONSE TO DEFDT'S MOTION TO SEVER ACTION  
DEFTS' TRIAL BRIEF  
MOTION IN LIMINE BY DEFTS (3)  
DECLARATION OF THEODORE T. HERHOLD  
DEFTS' OPPOS TO PLTF'S MO IN LIMINE TO EXCLUDE ANY

SCV-933210

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO  
CIVIL PROCEEDINGS AS OF 7/23/98

PITTS VS ROMULUS CORPORATION

1994

## EVIDENCE AT TRIAL PROPOUNDED BY DEFTS

03/21

DEFTS' OPPOS TO PLTF'S MO IN LIMINE TO EXCLUDE ANY  
EVIDENCE AT TRIAL RE A PRIOR ACTION BETWEEN SIMILAR PARTIES  
DEFTS MO TO SEVER ACTION OR ALTERNATIVELY TO EXCLUDE EVIDENCE  
ON THE ALTER EGO ISSUES  
PLTF'S OPPOS TO DEFTS' MO IN LIMINE TO EXCLUDE CERTAIN  
TESTIMONY AT TRIAL  
PLTF'S RESPONSE TO DEFT'S MO IN LIMINE TO EXCLUDE EVIDENCE  
OF THE ORIGINAL CONTRACT  
PLTF'S RESPONSE TO DEFT'S MO IN LIMINE TO EXCLUDE EVIDENCE  
OF THE INDIVIDUAL LIABILITY OF DEFT PARKS  
CASE NOT SETTLED; RETURNED TO DEPT 1 (8)  
SCD1-TR.CAL.: ASSIGNED TO SC17, JUDGE FIGONE, FOR TRIAL -  
03/21/94 at 09:00am SCD1 JURY TRIAL with jury and reporter  
ASSIGNED TO SC17, JUDGE FIGONE, FOR TRIAL  
03/21/94 at 09:31am SC17 JURY TRIAL with jury and reporter  
ASSIGNED FRM DEPT. ONE FOR JURY TRIAL. CASE SETTLED. (17)  
PROCEEDINGS REPORTED BY EASTELLER BRUHL (17)

04/21

\$78 JURY FEE REFUND TO THIEL CAMPBELL # 29669 - JURY FEE REFUND  
Paid: \$78.00 Receipt: 18390 Paid by: SUPERIOR CT Using:29669

05/05

REQ FOR DISM, W/PREJ, ENTIRE ACTION  
REQ FOR DISM, W/PREJ, ENTIRE ACTION

\*\*\*

END OF DOCKET

\*\*\*\*\*

1 RICHARD T. BOWLES  
2 JEFFREY S. SALISBURY  
3 BOWLES & VERNA  
4 2121 N. California Blvd., Suite 875  
Walnut Creek, California 94596  
(415)935-3300

5 Attorneys for Plaintiffs  
6 DENNIS B. ADAMS, B. LEE  
7 ALLEN, IV, DEBORAH BAKER,  
WILLIAM KEARNEY AND BRIAN  
LINSLEY

**FILED**  
San Francisco County Superior Court

APR 4 1991

DONALD W. DICKINSON, Clerk  
BY 11/1/91 J. G. [Signature] Deputy Clerk

#182

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

12 DENNIS B. ADAMS, B. LEE ALLEN,  
13 IV, DEBORAH BAKER, WILLIAM  
KEARNEY AND BRIAN LINSLEY,

14 Plaintiffs,

15 vs.

16 BOARDWALK CAPITAL CORPORATION, a  
17 California corporation;  
18 BOARDWALK HOLDING COMPANY, a  
19 Delaware corporation; BOARDWALK  
20 GROUP, INC., a Delaware  
21 corporation; GENERAL CELLULAR  
22 CORPORATION, a Delaware  
23 corporation; THOMAS F. WHITE &  
COMPANY, INC., a California  
corporation; ANTHONY T. EASTON;  
PHIL OTTO; D.J. WELCH; PAUL J.  
KRSEK; MASON A. DINEHART;  
DEBORAH R. MASSIE; ROBERT R.  
BROAD; and DOES 1 through 50,  
inclusive,

24 Defendants.  
25 \_\_\_\_\_/

No. 930727

COMPLAINT FOR DAMAGES AND  
EQUITABLE RELIEF

26 For their complaint, plaintiffs allege on information and  
27 belief, unless expressly stated to the contrary, as follows:  
28

PRELIMINARY ALLEGATIONS

1. Plaintiffs DENNIS B. ADAMS ("Adams"), B. LEE ALLEN, IV ("Allen"), DEBORAH BAKER ("Baker"), WILLIAM E. KEARNEY ("Kearney") and BRIAN LINSLEY ("Linsley"), on personal knowledge, are residents of California who conducted business at all material times and were damaged as hereinbelow alleged within this state. Plaintiffs brokered substantial quantities of stock to the public, and performed employment services for certain defendants, for which plaintiffs have not received compensation owed and payable to them.

2. Defendant BOARDWALK CAPITAL CORPORATION ("Boardwalk Capital") at all times relevant hereto was a member of the National Association of Securities Dealers, Inc. ("NASD") and was licensed as a broker/dealer qualified to offer and sell securities of the type and form that are the subject of this complaint. Boardwalk Capital served at relevant times as the managing underwriter of the securities offering herein and was materially responsible for paying the commissions which are the subject of this action.

3. Defendant BOARDWALK HOLDINGS CORPORATION ("Boardwalk Holdings") is a Delaware corporation, with its principal place of business in San Francisco, California, and is affiliated in some relevant manner with Boardwalk Capital. Boardwalk Holdings, through stock ownership and its management structures, owned or controlled Boardwalk Capital at relevant times hereto.

4. Defendant BOARDWALK GROUP, INC. ("Boardwalk Group") is a Delaware corporation with its principal place of business in San Francisco, California and is affiliated in some relevant manner with Boardwalk Capital and Boardwalk Holdings. Hereinafter,



1 Boardwalk Capital, Boardwalk Holdings and Boardwalk Group shall  
2 collectively be referred to as "Boardwalk".

3 5. Defendant D. J. WELCH ("Welch") was at relevant times  
4 hereto the chairman and chief executive officer of Boardwalk  
5 Holdings, chief executive officer of Boardwalk Group, chairman of  
6 Boardwalk Capital and a controlling shareholder of Boardwalk.  
7 Welch was at all relevant times hereto a resident of California and  
8 conducts substantial business in this state.

9 6. Defendant PAUL J. KRSEK ("Krsek") served at relevant  
10 times hereto as the chairman and president of Boardwalk Holdings.  
11 Krsek, at relevant times, told plaintiffs and others that he  
12 represented and spoke for the management of Boardwalk Capital.  
13 Krsek was at all relevant times hereto a resident of California and  
14 conducts substantial business in this state.

15 7. Defendant MASON A. DINEHART ("Dinehart") served at  
16 relevant times hereto as the executive vice president of Boardwalk  
17 Holdings and president of Boardwalk Capital. Dinehart was at all  
18 relevant times hereto a resident of California and conducts  
19 substantial business in this state.

20 8. Defendant DEBORAH R. MASSIE ("Massie") served at relevant  
21 times hereto as the senior vice president and general counsel of  
22 Boardwalk Holdings. Massie was at all relevant times hereto a  
23 resident of California and conducts substantial business in this  
24 state.

25 9. Defendant ROBERT A. BROAD ("Broad") served at relevant  
26 times hereto as Vice President and Director of Corporate Finance of  
27 Boardwalk Capital. Broad's duties included serving as the  
28

1 company's compliance officer, charged with seeing to it that  
2 applicable governmental, statutory and regulatory rules and laws  
3 were followed. At relevant times hereto, Broad was a California  
4 resident.

5 10. Defendant GENERAL CELLULAR CORPORATION ("General  
6 Cellular") is a Delaware corporation with its principal place of  
7 business in San Francisco, California. General Cellular issued,  
8 sold and exchanged its securities to the public, and was obliged to  
9 prudently pay for the benefit of plaintiffs related commissions and  
10 other income which are the subject of this action.

11 11. Defendant ANTHONY T. EASTON ("Easton") served at relevant  
12 times hereto as the chairman, chief executive officer and president  
13 of General Cellular. Easton was at all relevant times hereto a  
14 resident of California and conducts substantial business in this  
15 state.

16 12. Defendant PHILLIP OTTO ("Otto") served at relevant times  
17 hereto as the chief financial officer and an agent of General  
18 Cellular. Otto was at all relevant times hereto a resident of  
19 California and conducts substantial business in this state.

20 13. Defendants Easton, Otto, Welch, Krsek, Dinehart and  
21 Massie, and Broad shall hereinafter collectively be referred to as  
22 the "Individual Defendants." The Individual Defendants  
23 participated in the wrongdoing alleged herein to gain the  
24 substantial income and stock appreciation in General Cellular and  
25 Boardwalk which was to be derived by, inter alia, the securities  
26 offering which is the subject of this action.  
27  
28

1 14. Defendant THOMAS F. WHITE & COMPANY, INC. ("TFW") is a  
2 California corporation with its principal place of business in San  
3 Francisco. TFW was at relevant times hereto a member of the NASD  
4 and was licensed as a broker/dealer with the Securities and  
5 Exchange Commission ("SEC") in most or all of the 50 states. TFW  
6 was the broker/dealer through which plaintiffs sold certain of the  
7 securities of General Cellular which generated certain of the  
8 commissions that are the subject of this action.

9 15. Plaintiffs are ignorant of the true names and capacities  
10 of Does 1 through 50. Such Doe defendants are nevertheless legally  
11 responsible in some manner for the events, occurrences,  
12 representations, acts or omissions herein alleged, and plaintiff's  
13 damages were proximately caused by their conduct. At such time as  
14 plaintiffs learn the true names and capacities of the Doe  
15 defendants, plaintiffs will amend this complaint accordingly. All  
16 references and allegations to any named defendants herein shall  
17 include and apply to the Doe defendants.

18 16. At relevant times hereto, each of the defendants was the  
19 agent and/or employee of the other defendants. In performing the  
20 acts and omissions alleged herein, all defendants did so at  
21 relevant times within the course and scope of such agency and/or  
22 employment. As such, each defendant is legally responsible for the  
23 acts and omissions alleged herein as against all of the other  
24 defendants.

25 17. At relevant times hereto, Boardwalk was the alter ego of  
26 General Cellular, Welch, Krsek and Dinehart. General Cellular,  
27 Welch, Krsek and Dinehart are accordingly liable for the claims  
28

1 asserted against Boardwalk herein, in that their identities  
2 effectively became merged with Boardwalk, and further in that to  
3 maintain the fiction of separateness would work a substantial  
4 injustice on plaintiffs. Welch, Krsek and Dinehart owned,  
5 controlled and dominated Boardwalk by virtue of stock ownership,  
6 director positions, and employment as officers of Boardwalk.  
7 General Cellular controlled and dominated Boardwalk by virtue of  
8 advancing hundreds of thousands of dollars of commissions to  
9 Boardwalk and by threatening to accelerate such debt and/or failing  
10 to advance further funds if Boardwalk refused to complete the sale  
11 of General Cellular's public offering of securities. Moreover,  
12 Boardwalk was virtually insolvent at material times hereto and  
13 failed to honor various corporate formalities necessary to maintain  
14 a distinct corporate identity.

15 18. At relevant times herein, Boardwalk, General Cellular and  
16 the Individual Defendants knowingly and willfully conspired and  
17 agreed amongst themselves to perform, or omit to perform, the acts  
18 and/or omissions described herein attributable to them. These  
19 defendants further undertook measures, or failed to act, in such a  
20 way that the conspiracy was knowingly furthered by them. Moreover,  
21 these defendants each ratified, expressly and impliedly, all of the  
22 acts, omissions and representations of the others as alleged  
23 herein.

#### 24 FACTUAL ALLEGATIONS

25 19. On or about April 1, 1989, General Cellular entered into  
26 an agreement with Boardwalk (the "Boardwalk Agreement") through  
27 which it engaged Boardwalk as the lead underwriter to manage a  
28

1 proposed sale by General Cellular of up to 11 million shares of  
2 General Cellular Class A common stock ("Shares") in a public  
3 offering (the "Offering") registered with the SEC. Attached hereto  
4 as Exhibit "A" is a true and correct copy of this agreement.

5 20. The Offering was to consist of (1) an offer to sell  
6 Shares for cash (the "Cash Offering"), (2) an offer to exchange  
7 Shares for specified shares of Cellular Holdings, Inc., an  
8 affiliate of General Cellular (the "CHI Offering"), and (3) an  
9 offer to exchange Shares for ownership interests in cellular  
10 telephone licenses (or rights to the issuance of such licenses) to  
11 construct and operate telephone systems, or for interests in  
12 entities owning cellular licenses (the "Pops Offering").

13 21. The Boardwalk Agreement was a best-efforts underwriting  
14 agreement and provided that General Cellular would compensate  
15 Boardwalk on a commission basis as follows: (1) 5.00 percent  
16 generally for Shares sold as part of the Cash Offering; (2) 2.95  
17 percent generally for Shares exchanged in the CHI Offering and for  
18 all of the Shares of the Pops Offering; and (3) 0.55 percent for  
19 Shares exchanged or sold as part of the CHI "Family" Offering. The  
20 Boardwalk Agreement further provided that Boardwalk had the right  
21 to engage other broker/dealers to assist it in the sale or exchange  
22 of Shares. The Boardwalk Agreement also generally provided that no  
23 commissions would be paid to Boardwalk until such time as the  
24 Offering was closed.

25 22. Additionally, Boardwalk and TFW entered into an agreement  
26 whereby Boardwalk engaged TFW to participate in the Offering as an  
27 associate underwriter (the "TFW Agreement"). Attached hereto as  
28

1 Exhibit "B" is a true and correct copy of this agreement. The TFW  
2 Agreement provided that TFW would use its best efforts to sell or  
3 exchange the Shares and that it would be compensated on a  
4 commission basis, as follows: (1) 4.50 percent for Shares sold in  
5 the Cash Offering; (2) 2.55 percent generally for Shares exchanged  
6 in the CHI Offering and for all of the Shares of the Pops Offering;  
7 and (3) 0.45 percent for Shares exchanged or sold as part of the  
8 CHI "Family" Offering.

9 23. The TFW Agreement further provided that TFW and Boardwalk  
10 would indemnify, defend and hold harmless employees of General  
11 Cellular against losses arising out of sales of Shares by TFW in  
12 the Offering. Plaintiffs were at relevant times hereto employees  
13 of General Cellular in connection with the Offering.

14 24. In or about 1988 and 1989, plaintiffs entered into  
15 agreements with TFW to market Shares in connection with the  
16 Offering (the "Registered Representative Agreements"). Attached  
17 hereto as Exhibit "C" is a true and correct copy of an original of  
18 such an agreement signed by one of the plaintiffs. Pursuant to  
19 these agreements, TFW agreed that plaintiffs would receive  
20 commissions from the Offering as follows: (1) 2.50 percent for  
21 Shares sold in the Cash Offering; (2) 2.00 percent generally for  
22 Shares exchanged through the CHI Offering and for all of the Shares  
23 of the Pops Offering; and (3) 0.10 percent for Shares exchanged or  
24 sold as part of the CHI "Family" Offering. Additionally, a 0.10  
25 percent management override for Pops Offering Shares was to be  
26 paid. Attached hereto as Exhibit "D" is a true and correct copy of  
27 TFW's written agreement to pay these commissions to the plaintiffs.  
28

1           25. Based on the language of the Boardwalk, TFW and  
2 Registered Representative Agreements, and further based on  
3 Plaintiffs' close working relationships with key personnel at  
4 General Cellular, Boardwalk and TFW, all defendants had knowledge  
5 throughout the Offering of the intent, purpose, and basic substance  
6 of the Registered Representative Agreements.

7           26. The Offering first commenced in or about 1988. Due to  
8 difficulties in maintaining the effectiveness of the Offering with  
9 the SEC, it was halted sometime thereafter. Upon recommencing, the  
10 Offering of Shares proceeded and finally concluded in or about  
11 December 1989 or January 1990. Plaintiffs sold or exchanged  
12 numerous Shares pursuant to the Offering, generating substantial  
13 commissions which are due them.

14           27. During and/or even before the Offering, General Cellular  
15 advanced to Boardwalk gross commissions of not less than  
16 \$484,212.26. This was done without a formal closing ever having  
17 taken place. General Cellular paid an additional \$670,178.31 in  
18 gross commissions to Boardwalk in or about January, 1990, again  
19 without a formal closing taking place. At or about the time  
20 General Cellular, through Easton and Otto, advanced and paid said  
21 commissions to Boardwalk, General Cellular, Easton, Otto, and TFW  
22 were aware that Boardwalk was insolvent or would soon become  
23 insolvent without the advances. Said defendants also knew or  
24 recklessly disregarded that such dire financial circumstances were  
25 reflected in publicly available governmental and regulatory  
26 filings, for which Broad was materially responsible for preparing  
27 and causing to be filed. Yet at no time did General Cellular,  
28

(

1 Easton or Otto cease making such advances, and at no time did TFW  
2 take appropriate action to protect itself and plaintiffs from the  
3 probability that any commission funds so advanced would be lost.  
4 Boardwalk, Krsek, Dinehart, Massie and Broad did, in fact, misapply  
5 and/or misappropriate much or all of the commissions advanced,  
6 which advances, in fact, have been lost.

7 28. In or about November 1989, Boardwalk obtained a short-  
8 term loan from the Bank of San Diego (the "Bank") in the  
9 approximate amount of \$350,000 (the "Bank Loan"). To facilitate  
10 this loan, Boardwalk, General Cellular and the Individual  
11 Defendants (excepting Broad) advised the Bank that Boardwalk had an  
12 interest in the securities commission escrow of the Offering (the  
13 "Escrow") held by Bank of America (the "Escrow Holder") in an  
14 amount that would be more than enough to secure the Bank Loan. The  
15 true magnitude and/or effect of the advances hereinabove alleged  
16 and of the interest of TFW and plaintiffs in the Escrow, however,  
17 were materially misrepresented and concealed by Boardwalk, General  
18 Cellular and the Individual Defendants. As a result thereof, and  
19 because the Bank failed to adequately verify the so-called equity,  
20 the Bank issued its \$350,000 loan to Boardwalk and certain other  
21 related parties for the benefit of Boardwalk, and did so at a time  
22 when a substantially lesser amount in net funds were earmarked for  
23 Boardwalk in the Escrow and hence available as collateral for the  
24 Bank Loan.

25 29. General Cellular's total advancement of \$1,154,390.57 in  
26 commissions to Boardwalk was irregular and in breach of the  
27 Boardwalk Contract, and was done in a prejudicial, self-serving  
28



1 effort by General Cellular to keep Boardwalk in business so that  
2 the Offering could be successfully completed. As a result of their  
3 sales efforts, plaintiffs earned commissions through the Offering  
4 in an amount yet to be determined, but believed to be roughly  
5 \$800,000. Because of General Cellular's, Boardwalk's, TFW's and  
6 the Individual Defendants' misconduct as set forth herein, much or  
7 most of these funds were never paid to plaintiffs. To date,  
8 plaintiffs believe they have received only approximately less than  
9 \$65,000.00 of such sums due and owing them, excluding certain  
10 purported draws against commissions.

11 30. At the time plaintiffs Adams, Baker, Kearney and Linsley  
12 (the "Sales Staff Plaintiffs") began working for General Cellular  
13 to assist in selling and/or exchanging Shares in the Offering,  
14 General Cellular promised to advance to each of them the sum of  
15 \$2,000 per month against future commissions. Not long after the  
16 Sales Staff Plaintiffs began selling and exchanging Shares, they  
17 were prevented from doing so any further because the Offering was  
18 shut down for a period of time due to problems General Cellular  
19 encountered with the SEC. This shut down (the "Non-effective  
20 Period") lasted several months. As a result, the Sales Staff  
21 Plaintiffs were unable to earn commission income to offset their  
22 draws during the Noneffective Period.

23 31. General Cellular considered, treated and dealt with the  
24 Sales Staff Plaintiffs during the Non-effective Period as  
25 employees. Throughout the Noneffective Period, the Sales Staff  
26 Plaintiffs reasonably believed that they were, in fact, employees  
27 of General Cellular. The Sales Staff Plaintiffs maintained offices  
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1 at General Cellular and carried out marketing and related support  
2 functions for the benefit of General Cellular, without making sales  
3 of Shares or earning commission income during this period. Such  
4 functions specifically included, but were not limited to, market  
5 research regarding cellular licenses, updating computer listings  
6 and files of the owners of cellular systems and/or cellular rights,  
7 developing a data base of updated financial information relevant to  
8 the valuation of exchanges of cellular licenses, preparing and  
9 revising cellular-related intelligence reports, and laying the  
10 groundwork for future sales of shares by General Cellular to  
11 institutional brokerages and clients.

12 32. During the Noneffective Period, General Cellular retained  
13 substantial control over the Sales Staff Plaintiffs and otherwise  
14 treated them as employees. Internal employee charts reflected the  
15 Sales Staff Plaintiffs as employees of General Cellular. Memos  
16 from General Cellular management to General Cellular employees were  
17 delivered to the Sales Staff Plaintiffs, and referred to them, as  
18 employees. The Sales Staff Plaintiffs received bonuses as  
19 employees of General Cellular and were carried on General  
20 Cellular's medical and dental insurance group employee coverages.  
21 They were also compelled to attend regular, and often daily, sales  
22 meetings at General Cellular's offices which were presided over by  
23 General Cellular management, under threat of job termination.  
24 General Cellular management set daily hours and times which the  
25 sales staff plaintiffs were to work.

26 33. In addition to the Offering of Shares as hereinabove  
27 alleged, General Cellular effected a separate, private offering  
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1 that was completed in or about December 1989 (the "Private  
2 Offering"). The Private Offering consisted of the sale of  
3 approximately \$1 million in General Cellular preferred stock in  
4 Texas. Pursuant to this offering and in accordance with relevant  
5 agreements, plaintiff Kearney is entitled to receive from  
6 defendants, but has not been paid, approximately \$45,000 in sales  
7 commissions for his role therein.

8 FIRST CAUSE OF ACTION

9 (Breach of Third-Party Beneficiary Contract  
10 against Boardwalk and General Cellular)

11 34. Plaintiffs incorporate paragraphs 1 through 33 and bring  
12 this First Cause of Action for Breach of Third-Party Beneficiary  
13 Contract against Boardwalk and General Cellular.

14 35. Because the Boardwalk Agreement contemplates the  
15 formation of an underwriting group, and because the TFW Agreement  
16 contemplates sales on TFW's behalf by registered representatives  
17 affiliated by TFW, plaintiffs were intended beneficiaries under  
18 both the Boardwalk and TFW Agreements. Plaintiffs were further  
19 intended beneficiaries under these Agreements in that, at all  
20 relevant times, Boardwalk, General Cellular and the Individual  
21 Defendants were aware that plaintiffs were selling Shares under  
22 such agreements and accordingly would be entitled to commissions on  
23 such sales.

24 36. Plaintiffs have fully performed all of the terms and  
25 conditions incumbent upon them under the Boardwalk, TFW and  
26 Registered Representative Agreements.

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1           37. General Cellular breached the Boardwalk Agreement by  
2 paying or advancing commissions to Boardwalk prior to a formal,  
3 proper closing of the Offering, by doing so at a time when it knew  
4 that Boardwalk was, for all intents and purposes, insolvent, and by  
5 facilitating the Bank Loan for Boardwalk as hereinabove alleged.  
6 General Cellular further breached the Boardwalk and TFW Agreements  
7 by failing to pay to plaintiffs, or to ensure that Boardwalk and  
8 TFW paid to plaintiffs, the commissions to which plaintiffs are  
9 entitled.

10           38. Boardwalk breached the Boardwalk and TFW Agreements by  
11 misappropriating, misapplying, wasting, and/or squandering  
12 commissions advanced or paid to it by General Cellular prior to a  
13 formal, proper closing of the Offering, and by failing to pay to  
14 TFW or plaintiffs, or to reasonably help to ensure that TFW paid to  
15 plaintiffs, the commissions to which plaintiffs are entitled.

16           39. In addition, Boardwalk breached the Boardwalk and TFW  
17 Agreements by failing to pay to TFW and plaintiffs the full amount  
18 allocated to them from the escrow proceeds. TFW and plaintiffs  
19 received only a small amount of the money allocated to them from  
20 the escrow proceeds as a result of the GCC Offering. The remaining  
21 money due TFW and plaintiffs from the escrow proceeds was  
22 misappropriated, misused, or wasted by Boardwalk.

23           40. As a proximate result of General Cellular and Boardwalk's  
24 breaches of contract, plaintiffs have been damaged in an amount  
25 according to proof at trial.  
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SECOND CAUSE OF ACTION

(Interference with Contract against Boardwalk,  
General Cellular and the Individual Defendants)

41. Plaintiffs incorporate paragraphs 1 through 40 and bring this Second Cause of Action for Interference with Contract against Boardwalk, General Cellular and the Individual Defendants.

42. In 1989-1990, when General Cellular (through the assistance and acquiescence of Boardwalk and the Individual Defendants) improperly advanced the substantial commissions hereinabove alleged and helped arrange for the Bank Loan to Boardwalk, all defendants had a knowledge and awareness of (or recklessly disregarded) the TFW and Registered Representative Agreements, which existed at that time.

43. At the time General Cellular advanced such commissions, General Cellular and the Individual Defendants also knew of or recklessly disregarded Boardwalk's precarious financial position, that Boardwalk, Welch, Krsek, Dinehart, Massie and Broad intended to use the commission advances for improper purposes, and that said defendants had neither the intent nor the ability (to the extent they misapplied the commission advances for overhead and operating expenses) to pay TFW and plaintiffs under the TFW and Registered Representative Agreements.

44. Upon receiving such advances, Boardwalk, Welch, Krsek, Dinehart, Massie and Broad did not, in fact, pay or cause to be paid to TFW or plaintiffs the sums to which they were entitled, but instead misappropriated the funds for their own direct or indirect benefit.

1           45. By the advancement of funds to Boardwalk prior to a  
2 proper closing, and by circumventing the protective devices  
3 normally established through such an organized closing, General  
4 Cellular, Boardwalk, and the Individual Defendants knew or  
5 recklessly disregarded that plaintiffs were unlikely to collect  
6 their commissions from Boardwalk or TFW.

7           46. Likewise, by misappropriating or misdirecting General  
8 Cellular's commission advances, Boardwalk, Welch, Krsek, Dinehart,  
9 Massie and Broad knew or recklessly disregarded that plaintiffs  
10 would likely be unable to collect commissions from TFW or  
11 Boardwalk.

12           47. As a proximate result, plaintiffs have received but a  
13 fraction of the commissions due them from Boardwalk, General  
14 Cellular and TFW, and consequently have suffered damages in an  
15 amount according to proof at trial.

16           48. As a further proximate result, plaintiffs have been  
17 forced to incur attorney's fees defending themselves in that  
18 certain interpleader action known as General Cellular, et al. v.  
19 Boardwalk Capital, et al., San Francisco County Superior Court, No.  
20 921 217, filed June 22, 1990 (the "Interpleader Action").

21           49. Boardwalk, General Cellular and the Individual  
22 Defendants' deliberate and reckless acts of placing their economic  
23 welfare ahead of plaintiffs by interfering with plaintiffs'  
24 contractual relationships, with recklessness and/or the intent to  
25 cause damages to plaintiffs, constituted malicious and oppressive  
26 conduct sufficient to justify the imposition of punitive damages.  
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THIRD CAUSE OF ACTION

(Intentional Interference with Prospective  
Economic Advantage against Boardwalk,  
General Cellular and the Individual Defendants)

50. Plaintiffs incorporate paragraphs 1 through 49 and bring this Third Cause of Action for Intentional Interference with Prospective Economic Advantage against Boardwalk, General Cellular and the Individual Defendants.

51. In 1988-1990, when General Cellular (through the assistance and acquiescence of Boardwalk and the Individual Defendants) improperly advanced to Boardwalk the substantial commissions hereinabove alleged and arranged for the Bank Loan, all defendants had a knowledge and awareness of (or recklessly disregarded) the TFW and Registered Representative Agreements which portended the likelihood of economic benefits to plaintiffs.

52. At the time General Cellular advanced such commissions, General Cellular, Boardwalk and the Individual Defendants also knew of or recklessly disregarded Boardwalk's precarious financial position, that Boardwalk, Welch, Krsek, Dinehart, Massie and Broad intended to misapply the commission advances for improper purposes, and that said defendants had neither the intent nor the ability (to the extent they used the commission advances for overhead and operating expenses) to pay TFW or plaintiffs under the TFW Agreement.

53. Upon receiving said advances, Boardwalk, Welch, Krsek, Dinehart, Massie and Broad did not, in fact, pay or cause to be paid to TFW or plaintiffs the sums to which they were entitled, but

1 instead misappropriated the funds for their own direct or indirect  
2 benefit.

3 54. By the advancement of funds to Boardwalk prior to a  
4 proper closing, and by circumventing the protective devices  
5 normally established through such an organized closing, General  
6 Cellular, Boardwalk and the Individual Defendants further knew or  
7 recklessly disregarded that plaintiffs were unlikely to collect  
8 their commissions from Boardwalk or TFW.

9 55. Likewise, by misappropriating or misdirecting General  
10 Cellular's commission advances, Boardwalk, Welch, Krsek, Dinehart,  
11 Massie and Broad knew or recklessly disregarded that plaintiffs  
12 would likely be unable to collect commissions from Boardwalk.

13 56. As a proximate result of the above, plaintiffs have  
14 received but a fraction of the commissions due them from Boardwalk,  
15 General Cellular and TFW and consequently have suffered damages in  
16 an amount according to proof at trial.

17 57. As a further result, plaintiffs have been forced to incur  
18 attorney's fees defending themselves in the Interpleader Action.

19 58. Boardwalk, General Cellular and the Individual  
20 Defendants' deliberate and reckless acts of placing their economic  
21 welfare ahead of plaintiffs by disrupting plaintiffs' prospective  
22 economic advantages, with the intent to cause damages to  
23 plaintiffs, constitute malicious and oppressive conduct sufficient  
24 to justify the imposition of punitive damages.  
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FOURTH CAUSE OF ACTION

(Negligent Interference with Prospective  
Economic Advantage against Boardwalk,  
General Cellular and the Individual Defendants)

59. Plaintiffs incorporate paragraphs 1 through 58 and bring this Fourth Cause of Action for Negligent Interference with Prospective Economic Advantage against Boardwalk, General Cellular and the Individual Defendants.

60. In 1988-1990, when General Cellular (through the assistance and acquiescence of Boardwalk and the Individual Defendants) improperly advanced to Boardwalk the substantial commissions as hereinabove alleged, and helped arrange for the Bank Loan, all defendants had a knowledge and awareness of (or carelessly disregarded) the TFW and Registered Representative Agreements which portended the likelihood of economic benefits to plaintiffs.

61. At the time General Cellular advanced such commissions, General Cellular, Boardwalk and the Individual Defendants also knew of or recklessly disregarded Boardwalk's precarious financial position, that Boardwalk, Welch, Krsek, Dinehart, Massie and Broad intended to use the commission advances for improper purposes, and that Boardwalk had neither the intent nor the ability (to the extent they used the commission advances for overhead and operating expenses) to pay TFW or plaintiffs under the TFW Agreement.

62. Upon receiving said advances, Boardwalk, Welch, Krsek, Dinehart, Massie and Broad negligently and carelessly did not, in fact, pay or cause to be paid to TFW or plaintiffs the sums to